

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUNCAN J. McNEIL, III,

Plaintiff,

v.

CIVIL ACTION NO. 05-CV-72486-DT
HONORABLE PATRICK J. DUGGAN

UNITED STATES OF
AMERICA, et al.,

Defendants,

OPINION AND ORDER OF SUMMARY DISMISSAL

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 12, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff filed this lawsuit on June 22, 2005, naming the United States, the United States District Court for the Eastern District of Michigan, the Bankruptcy Court for the Eastern District of Michigan, and others as defendants. Plaintiff has sought to proceed *in forma pauperis*. On June 27, 2005, Magistrate Judge R. Steven Whalen issued an order to show cause, giving plaintiff fourteen days from the date of the order to explain in writing why his complaint should not be dismissed in this case pursuant to 28 U.S.C. § 1915(g).

The order to show cause was based upon the fact that Plaintiff has filed numerous lawsuits in the United States District Court for the Eastern District of Washington that

were dismissed pursuant to 28 U.S.C. § 1915(g) for being frivolous, malicious, or for failing to state a claim upon which relief could be granted.¹ Those cases include, but are not limited to, the following:

<u>Case Number</u>	<u>Defendant(s)</u>	<u>Date Dismissed</u>	<u>U.S. District Judge</u>
04-CV-371	Whaley	11/09/04	Alan A. McDonald
04-CV-372	Gregoire, et al.	11/09/04	Alan A. McDonald
04-CV-378	Miller, et al.	11/09/04	Alan A. McDonald
04-CV-379	Tighe, et al.	11/09/04	Alan A. McDonald
04-CV-380	Williams, et al.	11/09/04	Alan A. McDonald
05-CV-211	United States, et al.	8/9/05	Alan A. McDonald

According to Judge McDonald's order dismissing as frivolous plaintiff's complaint in Civil Case No. 05-211, several courts (e.g. U.S. Bankruptcy Court of the Central District of California, U.S. Bankruptcy Court of the Eastern District of Washington, Spokane County Superior Court) have declared Plaintiff to be a vexatious litigant. *See Duncan v. United States*, Case No. 05-211 Order of Dismissal, at 2 (August 9, 2005 E.D. Wash.)(Attach. 1).

The allegations in the complaints filed by Plaintiff in the above-listed cases are virtually identical to the allegations in the Plaintiff's pending matter. The only difference

¹On November 9, 2004, the Honorable Alan A. McDonald noted that since October 14, 2004, Plaintiff had filed over fourteen actions, naming hundreds of defendants. *See McNeil v. Whaley, et al.*, Case No. 04-CV-371, Order Denying *In Forma Pauperis* Status and Dismissing Complaint with Prejudice. After November 2004, Plaintiff filed at least five additional cases in the Eastern District of Washington, alone.

in the case pending before this Court is that Plaintiff has named entities within the Eastern District of Michigan as defendants. According to the order issued by Judge McDonald on August 9, 2005, Plaintiff has filed similar complaints in up to 70 different judicial districts throughout the United States— apparently in an attempt to circumvent the pre-filing review orders issued by the Washington court. *See Duncan v. United States*, Case No. 05-211 Order of Dismissal (August 9, 2005 E.D. Wash.)(Attach. 1). In those cases, Plaintiff added the names of defendants in those particular districts, as he did here, in an attempt to establish venue in those districts. Nevertheless, several courts transferred their complaints to the Washington court, finding venue improper in the districts in which they were filed. *See id.* However as Judge McDonald noted in his August 9, 2005 Order of Dismissal, when the matters are transferred, the Washington court must open its own case file with the result being that Plaintiff evades that court’s pre-filing review orders. *See id.* Judge McDonald therefore encourages courts to *sua sponte* dismiss Plaintiff’s complaints, rather than transferring them to his district.² *See id.*

In response to Magistrate Judge Whalen’s order to show cause, Plaintiff does not deny that his five prior cases were dismissed for being frivolous, malicious, or for failing to state a claim for which relief could be granted. Plaintiff claims, however, that he is exempt from the provisions of 28 U.S.C. § 1915(g) because he is in imminent danger of

²To effectuate this, Judge McDonald ordered the District Executive for the District Court for the Eastern District of Washington to send a copy of his order to the District Executives of every judicial district in the United States.

serious physical injury because he is being denied medical care at the Spokane County Jail in Spokane, Washington. The grievances in Plaintiff's complaint, however, are not related to his treatment at the jail. Moreover, Plaintiff has filed a notice of change of address which reflects that he no longer is incarcerated at the jail. Therefore, his allegations in response to the show cause order are insufficient to allow this court to consider those grievances.³

Accordingly,

IT IS ORDERED, that Plaintiff's complaint is **DISMISSED WITH PREJUDICE** as frivolous, malicious, and/or for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915A(b)(1)(2) and 1915(e)(2)(b).

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
Duncan J. McNeil, III
2030 W. Spofford
Spokane, WA 99205

³This Court questions whether Section 1915(g) grants courts authority to dismiss actions filed by individuals that are not related to confinement, but who happen to be confined at the time they file their complaints. Section 1915(e)(2)(B), however, *requires* courts to dismiss cases filed *in forma pauperis* if the court determines that the action is frivolous. Having reviewed Plaintiff's complaint and taking guidance from Judge McDonald's opinions, the Court concludes that the present action is frivolous.